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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/894,845	06/27/2001	Xavier Paliard	1681.002	3705
7590 07/09/2007				
Marcella Lillis Intellectual Property - R440 P.O. Box 8097 Emeryville, CA 94662-8097			EXAMINER ANGELL, JON E	
			ART UNIT 1635	PAPER NUMBER
			MAIL DATE 07/09/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/894,845	PALIARD, XAVIER	
	Examiner	Art Unit	
	J. Eric Angell	1635	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 June 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-3, 6, 7, 10-12, 15-21 and 41.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/J. E. Angell/
Primary Examiner, AU 1635

Continuation of 11. does NOT place the application in condition for allowance because: Applicants argue that the references do not teach or suggest sustained expression of an HCV immunogen for at least one month to induce tolerance to the immunogen. Applicants argue that the Examiner has failed to identify the motivation for combining the references. Applicants also argue that it is not predictable that tolerance to a particular immunogen can be achieved for more than a month. In response, it is the Examiner's position that the claimed invention is obvious in view of the teachings of the cited references (Gorczyński, Nakai, Wakita and Donnelly) for the reasons of record. Specifically, the prior art teaches: (1) the general concept that animals that are immunologically tolerant to an immunogen can be made by producing the sustained presence of a tolerance inducing immunogen in the liver of the animal (Gorczyński), (2) that a protein of interest can be expressed in the liver of an animal for more than a month using an adeno-associated viral particle encoding the protein of interest when the viral particle is delivered by portal vein delivery (Nakai; e.g., see Table 1, Figure 5, etc.), (3) a mouse that expresses HCV transgenes in its liver is a powerful tool for studying immune response and pathogenesis of HCV infection (Wakita), and (4) HCV NS5a gene is an HCV immunogen which can be used to raise an immunological response in animal (Donnelly). It would have been prima facie obvious to one of ordinary skill in the art of creating animal models for screening agents that modulate to a viral immunogen that the cited references could be combined to make the claimed invention with a reasonable expectation of success. Furthermore, one of ordinary skill in the art would understand that making such animal models would be desirable based on the teaching of Wakita that a transgenic mouse that expresses HCV genes in the liver can be used as a model for to understand immunological phenomena in HCV infections (as indicated above). It is noted that Applicants have submitted no evidence to support their contention that it is not predictable that tolerance can be achieved for more than one month. Contrary to Applicants contention, Gorczyński teaches that animals that are immunologically tolerant to an immunogen can be made by producing the sustained presence of a tolerance inducing immunogen in the liver of the animal, and Nakai teaches that a protein of interest can be expressed in the liver of an animal for more than a month. Furthermore, Applicants have submitted also submitted no evidence of an unexpected result, which would also support their position that making an animal that is tolerant to an immunogen for more than a month is unpredictable. Applicants are respectfully reminded that MPEP 716.01(c) makes clear that "The arguments of counsel cannot take the place of evidence in the record. In re Schulze , 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). Examples of attorney statements which are not evidence and which must be supported by an appropriate affidavit or declaration include statements regarding unexpected results, commercial success, solution of a long - felt need, inoperability of the prior art, invention before the date of the reference, and allegations that the author(s) of the prior art derived the disclosed subject matter from the applicant." Accordingly, Applicants arguments, without supporting evidence, are not persuasive.